

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1374 of 1983

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

CHAMPABEN RATANLAL KATWALA

Versus

PARSOTTAMBHAI MOTIBHAI PATEL

Appearance:

MR PRANAV G DESAI for Petitioners

MR AR MAJMUDAR for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 20/07/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the petitioners-defendants landlords, who were sued by the respondents-plaintiffs tenants, for a declaration that the landlords' possession of the suit property by executing an exparte decree is an illegal possession and for consequential relief that the possession be restored to the plaintiffs-tenants. The

trial court, on a total appreciation of the oral and documentary evidence on record, found that the defendants-landlords had taken possession of the property let out to the plaintiffs-tenants by executing a decree which was exparte so far as the plaintiffs-tenants were concerned, and therefore decreed the suit of the plaintiffs with consequential relief as to restoration of possession.

2. The defendants-landlords thereupon preferred an appeal to the lower appellate court. The lower appellate court, on a reappreciation of the oral and documentary evidence on record, dismissed the appeal and confirmed the decree of the trial court. Hence the present revision at the instance of the original defendants.

3. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

4. Only a few salient features require to be noted. The plaintiffs-tenants had pleaded and proved that they were in possession of the eastern as well as western side of the shed, constructed of iron corrugated sheets, being the suit premises. The present suit pertained to the eastern side of the shed. There is no demarcating line between the eastern and western side of the shed. The plaintiffs contended that the defendants-landlords had earlier in a previous suit being, Regular Civil Suit No.1505/69, obtained decree for possession in respect of the eastern side of the shed, and that the said decree was passed against one Ranchhodbhai Shankerbhai who was a defendant in that case. The said Ranchhodbhai Shankerbhai was made a defendant as Vahivat Karta and

partner of Jahind Saw Mill. In that suit the landlords had also joined one Bhanubhai Jethalal who was on the date of the suit only an ex-partner in the said firm. It was contended that neither of the two defendants contested the suit nor did they inform the plaintiffs-defendants, with the result that the landlords obtained an exparte decree of possession, which was behind the back of the present plaintiffs. The landlords also executed the decree passed in Regular Civil Suit No.1505/69 behind the back of the present plaintiffs and without their knowledge, and obtained possession of the suit premises. It was contended that the two defendants of that suit had no authority to handover the possession of the suit shed behind the back of the present plaintiffs. The sum and substance of the plaintiffs' case was that it was the partnership firm which was the tenant and only the legitimate partners could have represented the same.

4.1 The trial court held, on the total appreciation of the evidence on record, that the two defendants in the suit filed by the landlords viz. Ranchhodbhai Shankerbhai and Bhanubhai Jethalal were no longer partners in the tenant firm when the landlords filed their suit, that at the relevant point of time they had no authority to represent the partnership firm and that therefore the plaintiffs are still in legal possession of the suit premises, and therefore a decree for possession was passed in favour of the plaintiffs.

5. The lower appellate court, on a reappraisal of the evidence, found that the landlords had filed Regular Civil Suit No.1505/69 on 8th October 1969, and that the summons was served upon Ranchhodbhai Shankerbhai on 7th November 1969. However, on the date when the summons was served, the present plaintiffs were the partners of the said firm and Ranchhodbhai Shankerbhai was no longer a partner. Obviously, and it is an admitted fact that the present plaintiffs were not parties to the said suit. The lower appellate court also found on perusal of the partnership deed Exh.79 dated 7th February 1970 that the said partnership was formed and had come into effect on 20th October 1969. Even in the extract from the Registrar of Firms at Exh.80, the date of formation of the partnership is stated to be 20th October 1969. The said partnership deed shows various persons as partners, but name of Ranchhodbhai is nowhere mentioned as a partner. Obviously, therefore, Ranchhodbhai could not have accepted the suit summons on 7th November 1969 as a Vahivatdar of the said firm. It is pertinent to note that although the said Ranchhodbhai appeared in the suit

and filed a written statement, he took no further interest in the suit and did not contest the same. That is also an indication that he had no concern with the firm.

6. The lower appellate court also noted that the suit filed by the landlords was not filed against the firm of Jaihind Saw Mill, but it was filed against the Manager of the Jaihind Saw Mill, and the Manager was stated to be Ranchhodbhai. Obviously, since the present plaintiffs were not parties to the suit, the said decree was an exparte decree so far as the present plaintiffs are concerned.

7. The lower appellate court has further noted the impact of Exh.109, which is a notice of the landlords dated 23rd September 1965. This notice clearly indicates that Ranchhodbhai had sublet the suit premises to one Gujarat Timber Company, and the relevant averments made in the said notice also mention that Ranchhodbhai is no longer doing the business in the said premises. It is also pertinent to note that the said Ranchhodbhai was the proprietor and owner of the said firm until 20th October 1969, when the partnership evidenced by Exh.79 came into effect. This notice, therefore, establishes that long prior to the formation of the partnership, this Ranchhodbhai had lost interest in the suit premises and the business thereon. It is also pertinent to note that this was a notice addressed to the said Ranchhodbhai by the plaintiffs-landlords. Obviously, therefore, when Ranchhodbhai was not a partner let alone the Managing Partner on the date of filing of the suit or even on the date of service of suit summons, the resultant decree would not be binding on the partners or on the partnership firm.

8. The lower appellate court has also noted that in fact learned advocate for the landlords was not in a position to show as to how the decree passed in the said suit could be binding upon the present plaintiffs.

9. In the result, the judgement and decree of the lower appellate court confirming the judgement and decree of the trial court is eminently sustainable and does not require any interference by way of the present revision. This revision is, therefore, dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

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